A

DAYA BERSAMA SDN BHD

v.

SURHANJAYA SYARIKAT MALAYSIA & ORS

B

HIGH COURT MALAYA, KUALA LUMPUR
RAMLY ALI J
[SUIT NO: D5-24-81-2006]
10 JULY 2007

C ***COMPANY LAW:*** *Rectification of company's register - Application for - Companies Act 1965, s. 162 - Whether there was fraud and forgery of instrument carried out by alleged 'bogus' directors - Whether transactions made after winding up of company void - Whether plaintiff taking steps to stifle interveners' attempt to affirm ownership of a piece of land -* D *Whether there was an abuse of process of courts - Whether interveners' proven to have acquired indefeasibility title of land*

LAND LAW: *Indefeasibility of title and interests - Claim of interveners - Affirming ownership of piece of land - Whether interveners duly registered as legal and beneficial owners of land - Whether interveners* E *acquired indefeasibility of title*

The plaintiff company herein was wound up by an order of the court dated 24 August 2000. Subsequent to the winding up of the plaintiff, the register of members, directors and company F secretary were amended to have the second to fifth defendants inserted as shareholders, directors and company secretary in place of the then existing shareholders, directors and company secretary. From 9 October 2003 till 29 January 2004, the interveners had transacted and bought a piece of land from the plaintiff to build G their residential home thereon. The full purchase price of RM477,982 for the said land was paid to the plaintiff by the interveners, payment of which had been received and acknowledged. As at 3 July 2004 the interveners were duly registered as the legal and beneficial owners of the said land. On H 8 August 2005, the interveners were notified and came to know of the presentation of a registrar caveat on the said land by the official receiver acting on behalf of the plaintiff. Further search revealed to the interveners the presentation of another registrar caveat on the said land lodged by the police earlier than the I official receiver's. Owing to the existence of the two registrar caveats and refusal to remove the same, the interveners had to file

an application in S6 suit, seeking, *inter alia*, a declaration that the sale of the said land to the interveners were valid and that the interveners were the legal and beneficial owners of the said land. On 13 March 2006, the plaintiff had filed an application ('the present application') against the Companies Commission of Malaysia and the purported 'bogus' directors and shareholders of the company to purportedly seek rectification of plaintiff's company records by alleging that fraud and forgery of instruments were carried out by the alleged 'bogus' directors and shareholders and a declaration that all transactions made after the winding up of plaintiff be void. This action had been filed without any notice to the interveners even though the plaintiff was aware at all material times the implication of such action on the interveners' ownership, rights and interest over the said land. On 11 July 2006, the plaintiff filed another application in S7 suit not only against the purported 'bogus' directors and shareholders but this time also against the interveners. The plaintiff, vide S7 suit, specifically sought (a) to nullify the sale of the said land to the interveners on the sole ground of fraud and forgery of instruments by the alleged 'bogus' directors and shareholders; and (b) to 'recover' the said land from the interveners.

Held (dismissing plaintiff's application with costs):

(1) The steps taken by the plaintiff were to stifle the interveners' attempt to affirm their ownership of the said land. By filing this action the plaintiff had cleverly manipulated the court process to obtain redress for itself behind the back of the interveners and obtained a license to ensure the success of S7 suit without according any opportunity to be heard to the interveners. With such tactical moves deployed, plaintiff would guarantee the instantaneous 'recovery' of the said land at the expense of the interveners who would not only be left without any recourse but would also be forced to forfeit not only the said land but as well as the amount of money which had already been paid as purchase price to the plaintiff. The plaintiff was abusing the process of the court to oppress the interveners. (paras 34, 35 & 36)

(2) The land in question in the present case was purchased by the interveners. As at 3 March 2004, the interveners were duly registered as the legal and beneficial owners of the said land. By virtue of being *bona fide* purchasers of the said land

for value and without notice of any defect to title or the winding up of the plaintiff, the interveners have acquired indefeasibility of title over the said land. (paras 49 & 50)

Case(s) referred to:

Adorna Properties Sdn Bhd v. Boonsom Boonyanit [2001] 2 CLJ 133 FC ***(refd)***

Central Securities (Holdings) Bhd v. Haron Mohamed Zaid [1979] 2 MLJ 244 ***(refd)***

Damayanti Kantilal Doshi & Ors v. Jigarlar Kantilal Doshi & Ors [2002] 8 CLJ 218 HC ***(refd)***

Gasing Heights Sdn Bhd v. Aloyah Abd Rahman & Ors [1996] 3 CLJ 695 HC ***(refd)***

Jasa Keramat Sdn Bhd & Anor v. Monatech (M) Sdn Bhd [1999] 4 CLJ 533 CA ***(refd)***

Koh Thong Chuan v. The Official Assignee Of The Property Of Koh Liang Hee, Bankrupt [2003] 1 CLJ 125 CA ***(refd)***

Lesco Development Corp Sdn Bhd v. Malaysia Building Society Bhd [1998] 2 MLJ 184 ***(refd)***

Lian Keow Sdn Bhd (In Liquidation) & Anor v. Overseas Credit Finance (M) Sdn Bhd & Ors [1988] 2 MLJ 449 ***(refd)***

Lim Cheong Kern v. Vacpak Realty Sdn Bhd [1999] 5 MLJ 296 ***(refd)***

Pioneer Motor Service Company v. Chin Cheng Hong Sdn Bhd [2003] 3 CLJ 214 CA ***(refd)***

Re Len Chee Omnibus Co Ltd Chin Sow Lan v. Lee Che Omnibus Co Ltd & Ors [1969] 2 MLJ 202 ***(refd)***

Sabah Penang Development Sdn Bhd v. Yeng Hing Enterprise Sdn Bhd [1996] 1 BLJ 512 HC ***(refd)***

Seek Lai Neo & Anor v. Cheng Chuan Development Sdn Bhd & Ors [1994] 4 CLJ 892 HC ***(refd)***

Tan Jiak Chye v. Tan Toh Hua & Anor [2003] 5 MLJ 160 ***(refd)***

Legislation referred to:

Companies Act 1965, ss. 162(1), 223
National Land Code, ss. 340(1), 349(3)
Rules of the High Court 1980, O. 14A

For the plaintiff - Lim Tuck Sun (Darren Teo Sze Hoong with him); M/s Chooi & Co

For the interveners - KC Ang; M/s Paul Ong & Assoc

Reported by Suhainah Wahiduddin

JUDGMENT

Ramly Ali J:

[1] The plaintiff's application in the present originating summons is for the following orders and reliefs:

(i) A declaration that:

(a) any transfer or purported transfer of shares in the plaintiff, including but not limited to any transfer or purported transfer of shares in the plaintiff to the 2nd, 3rd and 4th defendants;

(b) any issue and/or allotment or purported issue and/or allotment of shares in the plaintiff, including but not limited to any issue and/or allotment or purported issue and/or allotment of shares to the 2nd defendant, 3rd defendant and the 4th defendant;

(c) any changes or alterations in the particulars of the registered office of the plaintiff;

(d) any changes or alterations in the particulars of the plaintiff's place of business;

(e) any changes or alterations to the composition of the board of directors of the plaintiff, and any and all appointments to the board of directors of the plaintiff;

(f) any and all appointments as the plaintiff's company secretary;

(g) any and all acts of the 2nd and/or 3rd and/or 4th and/or 5th defendants or their agents or representatives as members, directors or officers of the plaintiff; and

(h) any and all alterations, amendments, additions or deletions to the books and records of the plaintiff and any and all lodgments or filing of documents relating to the plaintiff lodged or filed with the 1st defendant;

made or done without the consent of the plaintiff's liquidator or the leave of court after the commencement of the winding-up of the plaintiff on 31 May 2000 is null and void and of no effect;

(ii) that the register of members of plaintiff and the particulars of the members of the plaintiff lodged with the 1st defendant be hereby rectified by the deletion of the names of the 2nd defendant, 3rd defendant and the 4th defendant, and by the insertion of the names set out in Appendix 1 herein as the registered owner of the respective shareholdings set out in the said Appendix I;

(iii) that the particulars of the registered office of the plaintiff whether stated in the records of the plaintiff itself or in the records of the plaintiff lodged with the 1st defendant be rectified by deleting the reference to No. 14, Jalan PJS 7, 46150 Petaling Jaya, Selangor, and by inserting a reference to 6th Floor, Wisma Selangor Deredging, South Block, 142-A Jalan Ampang, 50450 Kuala Lumpur;

(iv) that the particulars of the place of business of the plaintiff whether stated in the records of the plaintiff itself or in the records of the plaintiff lodged with the 1st defendant be rectified by deleting the reference to No. 18, Jalan 7/18B, Taman Batu Permai, Batu Lima, Jalan Ipoh, 52100 Kuala Lumpur, and bu inserting a reference to 1st Floor, Complex Kewangan, Jalan Raja Chulan, 50200 Kuala Lumpur;

(v) that the records of the plaintiff lodged with the 1st defendant in relation to its directors and secretaries be rectified by:

(a) the deletion of the names of the 2nd and 4th defendants as directors and by the insertion of Tay Huah Bin, Tay Eng Ket, Tee Wah Hon @ Tay Huah Kiong and Tay Wah Seng; and

(b) the deletion of the name of the 5th defendant as company secretary and the insertion of the name of Lee Wai Ngan;

(vi) that the plaintiff's register of directors, managers and secretaries be rectified by:

(b) the deletion of the names of the 2nd and 4th defendants as directors and by the insertion of Tay Huah Bin, Tay Eng Ket, Tay Wah Hon @ Tay Huah Kiong and Tey Wah Seng, being directors of the plaintiff immediately prior to the commencement of the plaintiff's winding-up;

(c) the deletion of the name of the 5th defendant as company secretary and the insertion of the name of Lee Wai Ngan being the secretary of the plaintiff immediately prior to the commencement of the plaintiff's winding-up;

(vii) that the plaintiff be at liberty to apply to this court;

(viii) that the costs of and occasioned by this application be paid by the 2nd, 3rd, 4th and 5th defendants; and

(iv) such further or other order as this court deems fit and/or just to grant.

[2] The grounds of the application are as follows:

(i) after the commencement of the plaintiff's winding-up, the plaintiff's property cannot be disposed of and its shares cannot be issued or transferred in the absence of an order of the court allowing the same;

(ii) further, on such an occasion, the powers of its officers and its board of directors cease and the board becomes *functus officio*; and

(iii) control of the affairs of the company as such becomes vested in the liquidator, and directors and officers cannot exercise their powers in the absence of the liquidator's approval or that of the court;

(iv) however, shares in the plaintiffs were stated to have been transferred, and new shares stated to have been issued and allotted to, the 2nd, 3rd and 4th defendants after the commencement of the plaintiff's winding-up;

(v) the composition of the plaintiff's board of directors was recorded as having been altered and the 5th defendant recorded as having been appointed as company secretary after the commencement of the plaintiff's winding-up;

(vi) particulars of the plaintiff's registered office and place of business was altered after the commencement of the plaintiff's winding-up;

(vii) neither the consent of the plaintiff's liquidator nor leave of the court was obtained to effect the dispositions and changes described above;

(viii) these dispositions and changes are therefore void and of no effect.

[3] The application is strongly opposed by the interveners, Wong Wee Kheong and Ho Mei Ling. The defendants take no step to oppose this application.

Summary Of Facts

[4] The plaintiff company was wound-up by an order of court dated 24 August 2000. Subsequent to the winding-up of the plaintiff, the plaintiff claims that the register of members, directors and company secretary were amended to have the 2nd to 5th defendants inserted as shareholders, directors and company secretary in place of the then existing shareholders, directors and company secretary. The plaintiff's registered office and place of business were likewise altered. All of this took place without the consent of the liquidator or leave of court and the then directors of the plaintiff were likewise unaware of the same. There is also no Form 32A for the transfer of shares to the defendants.

[5] From 9 October 2003 till 29 January 2004, the interveners had transacted and bought a piece of land from the plaintiff to build their residential home thereon.

[6] The full purchase price of RM477,982 for the said land was paid to the plaintiff by the interveners, payment of which has been received and acknowledged.

[7] Throughout the said transaction and registration of ownership of the said land from the plaintiff to the interveners, necessary searches were conducted. The searches revealed that:

(a) the said land was free from encumbrances, liens, charges, caveats and restrictions in title;

(b) there was no record of winding up order being lodged against the plaintiff;

(c) the interveners were dealing with the proper company directors at the relevant times.

[8] As at 3 March 2004 the interveners were duly registered as the legal and beneficial owners of the said land.

[9] The interveners claim that by virtue of being *bona fide* purchasers of the said land for value and without notice of any defect to title or the winding-up of the plaintiff, the interveners have acquired indefeasibility of title over the said land. The interveners further contend that due to the indefeasibility acquired by the interveners over the said land, the plaintiff should not seek an invalidation order in this court without affording the interveners a right to be heard.

Interveners' Application In Suit No. S6-21-201-2006 ("S6 Suit")

[10] Around 8 August 2005 for the 1st time the interveners were notified and came to know of the presentation of a registrar caveat on the said land by the official receiver acting on behalf of the plaintiff.

[11] Further search revealed to the interveners again for the very 1st time the presentation of another registrar caveat on the said land lodged by the police earlier than the official receiver's.

[12] Owing to the existence of the two (2) registrar caveats and refusal to remove the same, the interveners have to file an application in S6 Suit seeking *inter alia*:

(a) a declaration that the sale of the said land to the interveners is valid and that the interveners are the legal and beneficial owners of the said land; and

(b) an order to cancel the registrar caveat lodged respectively by the police and the official receiver.

Plaintiff's Application In Suit D5-24-81-2006 (This Suit)

[13] On 13 March 2006, plaintiff has filed an application in this court (the present application) against the Companies Commission of Malaysia and the purported "bogus" directors and shareholders of the company to purportedly seek:

A (a) rectification of plaintiff's company records by alleging that fraud and forgery of instruments were carried out by the alleged "bogus" directors and shareholders; and

(b) a declaration that all transactions made after the winding-up
B of plaintiff would be void.

[14] This action has been filed without any notice to the interveners even though plaintiff is aware at all material times the implication of such action on the interveners' ownership, rights and
C interests over the said land.

Plaintiff's Application Is Suit S7-22-664-2006 ("S7 Suit")

[15] Almost four (4) months later on 11 July 2006, plaintiff has filed another application in S7 Suit not only against the purported
D "bogus" directors and shareholders but this time also against the interveners.

[16] Despite the fact the plaintiff said that no allegation of fraud and/or forgery has ever been made against the interveners, plaintiff
E still chose to sue the interveners together with the "bogus" directors at the S7 Suit.

[17] *Vide* S7 Suit, plaintiff now specifically seeks:

(a) to nullify the sale of the said land to the interveners on the
F sole ground of fraud and forgery of instruments by the alleged "bogus" directors and shareholders; and

(b) to "recover" the said land from the interveners.

[18] However, when S7 Suit was filed and served by the plaintiff
G on the interveners, the interveners were kept in the dark of the existence of the present action ("D5 Suit"). The interveners have only come to know of the existence of this action through its own diligence.

H **The Law On Rectification Of Company Register**

Section 162, Companies Act 1965

[19] Section 162(1) of the Companies Act 1965 provides that if:

I (a) the name of any person is without sufficient cause entered in or omitted from the register; or

(b) default is made or unnecessary delay take place in entering in the register the fact of any person having ceased to be a member, the person aggrieved or any member or the company may apply to the court for rectification of the register, and the court may refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party to the application.

[20] In *Re Len Chee Omnibus Co. Ltd. Chin Sow Lan v. Lee Che Omnibus Co. Ltd. & Ors* [1969] 2 MLJ 202 Raja Azlan Shah J (as he then was) stated that the court has a discretion to give a summary remedy under s. 162 Companies Act 1965 but would not normally entertain such an application if the facts are complex and disputed. In this case the court dismissed an application to rectify under s. 162 Companies Act 1965 as the application was not made within a reasonable time after the applicant became aware of the facts entitling her to the relief.

[21] In *Sabah Penang Development Sdn. Bhd. v. Yeng Hing Enterprise Sdn. Bhd.* [1996] 1 BLJ 512 the court in dismissing the applicant's motion under s. 162 Companies Act 1965 said that the jurisdiction of the court to grant the summary remedy to rectify the register of members of a company under s. 162 of the Act is general but the exercise of it is discretionary. The discretion will only be exercised in favour of the applicant where the case is clear and free from difficulty or material doubt. Where the case is complicated and there is doubt as to the *bona fide* of the transaction, or where the case involves complicated questions of law and fact, the court will refuse to order rectification on a motion but will leave the applicant to seek rectification by way of an action.

[22] In *Pioneer Motor Service Co. v. Chin Cheng Hong Sdn. Bhd.* [2003] 3 CLJ 214 the Court of Appeal said that it is clear from s. 162(1) Companies Act 1965 that the power to order rectification is discretionary, because even if a situation giving cause for rectification exists, the court may refuse the application.

[23] In *Lim Cheong Kern v. Vacpak Realty Sdn. Bhd.* [1999] 5 MLJ 296 the court said that the power to rectify the register under the section is a summary remedy. Where courts are faced with serious disputes of title, allegations of fraud or some further investigation

pertaining the facts may be required, the proper course will be to commence a suit against the company. Since the matter at hand could not satisfactorily be explained by the available affidavits, and by reason of the complex facts, and the prevalence of a substantial number of intricate legal points yet to be resolved, the application was dismissed.

Findings Of Court

[24] In the present case, the court will determine whether the facts are complex and disputed; or clear and free from difficulty or material doubt. The court will also consider whether there is doubt as to the *bona fide* of the transaction or whether the case involves complicated question of law and fact. If the answer is in the affirmative, then, the application herein must fail and be dismissed.

[25] In this action plaintiff has essentially asked for the rectification on plaintiff's records to effect the change of directorship and ownership of plaintiff retrospectively. In this action plaintiff has also sought to invalidate all acts and transactions made after the winding up of the plaintiff, which would include the sale transaction for the said land to the interveners.

[26] Such retrospective change of directorship and ownership would mean the change of status and power of the purported "bogus" directors and shareholders. Their authority to enter into the sale transaction of the said land with the interveners would then be stripped away and ultimately invalidating the sale of the said land to the interveners.

[27] In fact at paras 15.1, 15.2, 18 and 19 of plaintiff's 1st affidavit affirmed by Lim Tan Huat on 6 March 2006, plaintiff has made serious allegation of fraudulent sale or transfer of the said land to the interveners and also imputed fraud on the part of the interveners.

[28] Now if the plaintiff's application *vide* encl. 1 is allowed the following consequence will ensue:

(a) the interveners as innocent 3rd parties purchasers would be deprived of their rights to be heard and to answer or to rebut all the serious allegations made by plaintiff;

(b) the Interveners' legal action in S6 Suit and S7 Suit to affirm and defend their ownership over the said land would be paralysed without being heard on its merits; and

(c) Plaintiff would have easily obtained a judgment in its favour "hands down".

[29] Clearly the interveners' rights and interest over the said land will be jeopardized by the judgment made in favour of the plaintiff in the present action.

[30] Plaintiff has staged the filing of different suits in different courts within a planned time frame in aid of its alleged cause of "recovering" the said land from the interveners. Even though S7 Suit is filed by plaintiff to attack the interveners' rights of ownership over the said land, plaintiff has also launched another front by filing this action but without the knowledge of the interveners and has bypassed the need to bring in the interveners as parties to this action under the pretext and guise of merely seeking rectification of the company's directorship and shareholding whereas such rectification would have caused the invalidation of the sale of the said land by the alleged "bogus" directors and shareholders to the interveners.

[31] The invalidation of the sale of the said land on grounds of fraudulent transfer and unlawful exercise of power of authority by the purported "bogus" directors and shareholders which form the basis of S7 Suit would have been affirmed by a judgment made in favour of the plaintiff in this action.

[32] Consequently by securing an order in terms of this action, the S7 Suit filed by the interveners would be crippled and become redundant since the sale transaction of the said land to the interveners would have already been nullified by the pre-emptive strike devised by plaintiff.

[33] In fact plaintiff has already filed an application to strike out the interveners' application in S6 Suit in anticipation of the outcome of this action. Also in S7 suit, plaintiff has filed an application under O. 14A Rules of High Court 1980 in anticipation of a judgment in its favour obtained in this court. In O. 14A application, plaintiff is asking the S7 court to consider inter alia that the disposal of the said land to the interveners after plaintiff's winding-up was obtained through void instrument.

[34] It is thus obvious that the steps taken by plaintiff are to stifle the interveners' attempt to affirm their ownership of the said land. By filing this action plaintiff has cleverly manipulated the court process to obtain redress for itself behind the back of the interveners and obtained a license to ensure the success of S7 Suit without according any opportunity to be heard to the interveners.

[35] With such tactical moves deployed, plaintiff would guarantee the instantaneous "recovery" of the said land at the expense of the interveners who would not only be left without any recourse but would also be forced to forfeit not only the said land but as well as their whole savings of RM477,982 which has already been paid as purchase price to plaintiff.

[36] From the above, plaintiff is abusing the process of the court to oppress the interveners.

[37] The Court of Appeal in the case of *Jasa Keramat Sdn. Bhd. & Anor v. Monatech (M) Sdn. Bhd* [1999] 4 CLJ 533 held that:

> … cases may arise where the true purpose for invoking the Court's process is something other than to obtain a remedy provided by law. It may be to oppress a Defendant … Where an action is found to be an abuse of the Court's process, it may be struck out … It is abused when it is diverted from its true course so as to serve extortion or oppression: or to exert pressure so as to achieve an improper end. When it is so abused, it is a tort, a wrong known to the law. The judges can and will intervene to stop it.

[38] The High Court in the case of *Gasing Heights Sdn. Bhd. v. Aloyah bte. Abd Rahman & Ors* [1996] 3 CLJ 695 also held that:

> … By filing this Writ therefore the Developer had literally sought to pre-empt the Defendants from proceeding any further … It is a tort to use legal process in its proper form in order to accomplish a purpose other than that for which it was designed and, as a result, to cause damage … Here the developer filed this action praying for relief which included an injunction, the effect of which was to prevent the Defendants from proceeding with a motion they had filed for a relief by way of *certiorari* which is recognise by the law. To grant such an injunction would have been a denial of justice by the Court … The filing of a collateral action as was done in this case is itself an abuse of Court process which must result, as happened here in its being struck out …

[39] In the present case the plaintiff was wound-up *vide* Companies (Winding-Up) Petition No: D2-21-70-2000 in D2 Winding-Up Court on 24 August 2000. The present application was filed in this D5 Court. The court is of the view that the present application ought to have been filed in D2 Winding-Up Court, being the only court which is seized with the power and authority to control supervise and determine the validity of any transaction entered into after the winding-up of plaintiff pursuant to the winding up order made by D2 Winding-Up Court itself. The manner in which the approach was made to this Court snacks of an abuse.

[40] In this respect, the court is in full agreement with the decision of the High Court in the case of *Tan Jiak Chye v. Tan Toh Hua & Anor* [2003] 5 MLJ 160 where it was held that:

> … the Plaintiff application should be struck out on the ground that the Defendants, being officers of the Court, are answerable only to the Court which appointed them in the first place … this Court cannot hear the Plaintiff's application because the application for leave should be filed *vide* a summons in chambers in the receivership proceedings, instead of by way of an originating summons in a fresh proceedings as the Defendants were appointed as receivers and managers by the Court in the original suit which has not yet been discountinued … since the Defendants were appointed as receivers and managers in the original suit, the Plaintiff should apply vide a summons in chambers in the original suit for leave to institute the proposed proceedings against the Defendants in their capacity as Court appointed receivers and managers … the leave should be applied for and obtained from the original Court appointing the receiver because it is only proper that the Court originally appointing the said receivers should be the proper forum to give direction, supervise or discipline if necessary and decide any issue pertaining the conduct of its owns officers …

[41] As a matter of fact, the application to appoint the current private liquidator of the plaintiff – ie, Mr. Lim Tian Huat, was also filed in D2 Winding-Up Court. This court cannot understand why the present application was not filed in that same D2 Winding-Up Court.

[42] The S7 Suit and this application are premised on similar facts, issues and causes of action to seek ultimate similar relief ie, to ultimately "recover" the said land from the interveners. The filing of these various actions by plaintiff has resulted in wasted costs and time.

[43] The Supreme Court in the case of *Lesco Development Corp. Sdn. Bhd. v. Malaysia Building Society Bhd.* [1998] 2 MLJ 184 decided that:

> It is undesirable to allow a situation where two (2) different Courts would try and determine the same issues arising between the same parties relating to the same subject matter.

[44] The High Court in the case of *Damayabnti Kantilal Doshi & Ors v. Jigarlar Kantilal Doshi & Ors* [2002] 8 CLJ 218 also decided that:

> … the conduct of the 1st Plaintiff in instituting several proceedings in both the Johor Bahru and Kuala Lumpur High Court in respect of the same subject matter smacks of one of the worst cases of abuse of process, and by reason thereof, the interlocutory injunction herein cannot be allowed to stand.

[45] The court also considers the issue of 'delay' in filing the present application. As early as 8 September 2003, Mr. Tay Huah Bin ie, the director of the plaintiff has already discovered the alleged "fraud and forgery". But it took the company almost 2 ½ years to file encl. 1 on 13 March 2006.

[46] Clearly the doctrine of laches should operate to prevent encl. 1 from being allowed.

[47] In *Central Securities (Holdings) Bhd. v. Haron bin Mohamed Zaid* [1979] 2 MLJ 244, the Federal Court said that:

> The power to rectify the register under the section is a summary remedy. The Court on an application under the section may decide any question of title of any party to have his name entered or omitted from the register, whether such question arises between members and alleged members or between such persons and the company. It may also decide any incidental questions arising with the above; if expedient or necessary. Sometimes the summary procedure under the section is not an appropriate remedy. Thus where complicated questions of law and fact arise it is, we think, only proper to refer the parties to a suit, because rectification can also be had any a suit: see *In re Len Chee Omnibus Co. Ltd.* [1969] 2 MLJ 202. In *Reese River Silver Mining Co. v. Smith* [1869] LR 4 HL 64, the application for rectification of the register on the ground of fraud and misrepresentations was by way of a suit against the company. And delay in applying for rectification will destroy the remedy. See: *In re Len Chee Omnibus Co. Ltd. (supra),*

where it was held that two (2) years delay was fatal, *Ansett v. Butler Air Transport Ltd.* (158) 75 WN 229, where a suit for rectification of the share register was delayed in almost a year, it was held that the Plaintiffs were not entitled to relief.

[48] The plaintiff argues that the application is based on s. 223 of the Companies Act 1965 which states that:

> any disposition of the property of the Company … made after the commencement of the winding-up by the Court shall, unless the Court otherwise orders, be void.

[49] The land in question in the present case was purchased by the interveners. The full purchase price of RM477,982 for the said land was paid to the plaintiff by the interveners, payment of which has been received and acknowledged. As at 3 March 2004, the interveners were duly registered as the legal and beneficial owners of the said land.

[50] By virtue of being bona fide purchasers of the said land for value and without notice of any defect to title or the winding-up of the plaintiff, the interveners have acquired indefeasibility of title over the said land.

[51] Section 340(1) National Land Code provides that:

> The title or interest of any person … for the time being registered as proprietor of any land … shall … be indefeasible.

[52] The Federal Court in the case of *Adorna Properties Sdn. Bhd. v. Boonsom Boonyanit* [2001] 2 CLJ 133 has enunciated that:

> The proviso to sub-section (3) of section 340 of the National Land Code 1965 dealt with only one class or category of registered proprietors for the time being. It excludes from the main provision of sub-section (3) this category of registered proprietors so that these proprietors are not caught by the main provision of this sub-section.
>
> Who are these proprietors?
>
> The proviso says that any purchaser in good faith and for valuable consideration or any person or body claiming through or under him are excluded from the application of the substantive provision of sub-section (3). For this category of registered proprietors they obtained immediate indefeasibility notwithstanding that they acquired their titles under a forged document. We, therefore, agree with the High Court judge that, on the facts of

this case, even if the instrument of transfer was forged, the Respondent nevertheless obtained an indefeasible title to the said lands.

[53] The Supreme Court in the case of *Lian Keow Sdn. Bhd. (In Liquidation) & Anor v. Overseas Credit Finance (M) Sdn. Bhd. & Ors* [1988] 2 MLJ 449 elaborated that:

> It was common ground, he said that section 223 of the Companies Act 1965 applied to the 1st Respondent so as to avoid the disposition of the company's property unless the Court otherwise ordered by making a validation order … However, upon registration of the transfer of the said land to the purchaser who thereby obtains a right in rem or a real right in the property, the express provisions of the Code will apply to the exclusion of equitable principles … the transfer of the estate to the 1st Respondent cannot be set aside without resorting to section 340 of the Code …

[54] Further s. 349(3) National Land Code 1965 provides that:

> no land, share or interest shall vest in the Official Assignee under any adjudication of bankruptcy, or order for administration in bankruptcy, until it has become registered in his name pursuant to this section.

[55] In *Koh Thong Chuan v. The Official Assignee Of The Property Of Koh Liang Hee, Bankrupt* [2003] 1 CLJ 125, the Court of Appeal held that:

> … Until the registration of the said property pursuant to section 349 of the National Land Code 1965 in his name, the Respondent (Official Assignee) was vested only with an equitable interest in the said property. In accordance with equitable principles, the legal interest in the charges acquired by the 2nd Appellant (financial institution), as a *bona fide* purchaser for value and without notice, prevailed over the Respondent's equitable interest.

[56] In *Seek Lai Neo & Anor v. Cheng Chuan Development Sdn. Bhd. & Ors* [1994] 4 CLJ 892, the High Court held that:

> … Their only common link is the 1st Defendant and since the registration of the title was effected after the 1st Defendant had already been wound-up and under section 223 of the Companies Act 1965 such a disposition is void, the issue is whether this Court can cancel the transfer and order that the property be reverted to the Official Assignee so that he can settle the dispute over the title of the property.

Section 223 of the Company Act 1965 states that:

> any disposition of the property of the Company … made after the commencement of the winding-up by the Court shall, unless the Court otherwise orders, be void". The phrase "unless the Court otherwise orders" does empower me to validate a transaction that would otherwise be void. On the peculiar facts of this case, I am most reluctant to revert the dispute over title to the Official Assignee as, firstly, by virtue of section 340(1) of the National Land Code 1965, the 2nd and 3rd Defendants have an indefeasible title to the property.

[57] Based on the above authorities and the undisputed facts of this case, it is clear therefore that s. 223 Companies Act 1965 does not apply to land matter as in the present case.

Conclusion

[58] Based on the above considerations the court finds that there is no merit in the plaintiff's application. Therefore the plaintiff's application is dismissed with costs.